

MONDAY, DECEMBER 6, 2004

RULE PROPOSAL

COMMUNITY AFFAIRS

DIVISION OF FIRE SAFETY

FIRE CODE ENFORCEMENT

FIREFIGHTER SERIOUS INJURY AND DEATH INVESTIGATIONS

Proposed New Rule: N.J.A.C. 5:71-2.12

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-25d(f) and 52:27D-198.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-455.

Submit written comments by February 4, 2005 to:

Michael L. Ticktin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

PO Box 802

Trenton, New Jersey 08625-0802

Fax: (609) 633-6729

The agency proposal follows:

Summary

P.L. 1991, c.186 (N.J.S.A. 52:27D-25d(f)) currently obligates Division of Fire Safety staff, in conjunction with Department of Health and Senior Services and Department of Labor and Workforce Development personnel, to investigate fires that result in the death or serious injury of a firefighter. Division of Fire Safety staff is empowered to subpoena witnesses and documents in the course of these investigations and to issue notices or orders pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq. These notices and orders can be enforced pursuant to Section 19 of the Uniform Fire Safety Act, N.J.S.A. 52:27D-210, as a notice or order of the Commissioner of Community Affairs.

The Department's proposed new rule would clarify the investigative and enforcement processes. To assist in the investigative process, a provision would be added requiring fire departments to notify the Division of relevant incidents within four hours. Additionally, provisions would be added regarding securing and testing evidence and preserving scenes. Finally, to assist in the enforcement process, a provision would be added regarding penalties for hindering investigations. The proposed

new rule is intended to further aid the Division in identifying the mechanisms that could be utilized to prevent future firefighter injuries and deaths.

In accordance with N.J.A.C. 1:30-3.3(a)5, the proposed new rule is not subject to the Administrative Procedure Act rulemaking calendar provisions since the Department has established a 60-day comment period.

Social Impact

The proposed new rule would have a positive social impact since it would improve the investigative processes for incidents resulting in fire fighter serious injuries or death. These investigations not only identify existing firefighting practices that should be changed, but may also identify issues that may need to be addressed by Uniform Fire Code amendments or enforcement. The end result would be the identification and possible implementation of practices and procedures that would create a more fire-safe environment for firefighters and the general public.

Economic Impact

The Division currently has an investigative unit whose membership may be increased by one. In some cases, owners may have to bear the costs of securing their fire-damaged properties, and the Department may have to bear the cost of tests. Personnel or entities that do not comply with Division orders would be subject to penalties of up to \$5,000 per violation, per day.

Federal Standards Statement

The proposed new rule is consistent with the standards imposed as a result of the Occupational Safety and Health Act, 29 U.S.C. § § 651 et seq., and the Public Employees Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

Jobs Impact

Other than the one position discussed in Economic Impact above, the Department does not anticipate the creation or loss of any jobs because of the proposed new rule.

Agriculture Industry Impact

The Department does not anticipate any significant impact upon the agriculture industry because of the proposed new rule; however, farms that are the site of fire incidents resulting in the serious injury or death of firefighters would be subject to the fire investigations as they have been in the past. Farm owners who refuse to comply with Division orders would continue to be subject to Uniform Fire Safety Act penalties.

Regulatory Flexibility Analysis

The proposed new rule would not impose additional reporting, recordkeeping or other compliance requirements upon most “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. since the proposed new rule refines investigative procedures established by statute in 1991. “Small businesses” as defined in the Regulatory Flexibility Act may require the use of professional services to comply with certain investigative orders or to contest penalties; however, no differing standards have been established since the proposed new rule would be promulgated for public safety purposes.

Smart Growth Impact

The Department does not anticipate the proposed new rule would have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

5:71-2.12 Firefighter serious injury and death investigations

(a) In conjunction with the Department of Labor and Workforce Development and the Department of Health and Senior Services, the Division shall conduct investigations of fire incidents in which one or more firefighters suffer death or serious injury and identify those measures that may be required to prevent the future occurrence of deaths and serious injuries under similar circumstances. The Division shall have the authority to conduct such investigations anywhere in the State.

1. In furtherance of any firefighter serious injury or death investigation, the Division may issue and enforce subpoenas to compel the testimony of any person who might have knowledge of any relevant matters and the production of any relevant documents.

(b) As a part of the investigative process, the Division shall:

1. Secure or order to be secured, any and all evidence including personal protective clothing and equipment or any other item(s) that may have played a role in an incident involving firefighter serious injury or death if the failure to secure such evidence may compromise its integrity or render it useless to the investigation;

2. Examine, test or order to be examined or tested, any and all evidence, personal protective clothing and equipment or any other item(s) that may have played a role in an incident involving firefighter serious injury or death; and

3. Preserve or order the preservation of buildings, structures, areas, apparatus or equipment from destruction or demolition; and order such to be secured and protected from public entry and/or use until released by the Division.

(c) Fire departments and fire companies shall notify the Division of any firefighter line-of-duty serious injury or death as soon as possible, but no later than four hours from the time of injury or death.

1. The Division shall determine the manner for notification.

2. The Division may issue a penalty against an appropriate party for failure to timely notify the Division or for hindering notification.

(d) If any investigation conducted under this subsection results in the discovery of any violation of the provisions of the Uniform Fire Safety Act, P.L. 1983, c.383 (N.J.S.A. 52:27D-192 et al.) or the Uniform Fire Code (N.J.A.C. 5:70), the Division, as an enforcing agency, may issue a written notice or order pursuant to the Uniform Fire Safety Act.

1. Any notice or order issued by the Division pursuant to this section may be enforced pursuant to N.J.S.A. 52:27D-210 as a notice or order of the Commissioner.